



"To enrich lives through effective and caring service"



Santos H. Kreimann
Director

Kerry Silverstrom
Chief Deputy

October 04, 2011

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

27 October 4, 2011

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

**DEPARTMENT OF BEACHES AND HARBORS
APPROVAL OF RENEWAL OF OPTION TO AMEND LEASE AGREEMENT TO FACILITATE
REDEVELOPMENT–
HOLIDAY MARINA (Parcel 21) –
MARINA DEL REY
(4th DISTRICT)
(4 VOTES)**

SUBJECT

Request for approval of Renewal of Option to Amend Lease Agreement for Parcel 21 extending for up to a maximum of 66 months the period for Holiday-Panay Way Marina, LLC to obtain the remaining regulatory approvals and satisfy the other conditions to the exercise of the option regarding its proposed redevelopment of the proposed project.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that your Board has previously considered and certified the combined Final Environmental Impact Report relating to the proposed Parcel 21 lease extension, Parcel OT new lease, and development on Parcels 21 and OT and adopted the related Environmental Findings of Fact and Statement of Overriding Considerations, and the Mitigation Monitoring Programs for these projects.
2. Approve and authorize the Mayor to sign the Renewal of Option to Amend Lease Agreement, attached as Exhibit A, granting to the current lessee, Holiday-Panay Way Marina, LP, an extension for up to 66 months from September 30, 2011 to obtain the remaining regulatory approvals and satisfy the other conditions to the exercise of the option for the proposed project.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On July 15, 2008, your Board granted Holiday-Panay Way Marina, LP, a California limited partnership ("Lessee") an option ("Option") to extend the term of the existing lease for an additional 39 years to facilitate the redevelopment of Parcel 21. Exercise of the Option is contingent upon Lessee's receipt of entitlements and fulfillment of other conditions required therein. Upon such exercise of the Option, Lessee will be required to: a) demolish the existing buildings and docks; b) construct a 29,000 square foot building that will be able to accommodate all the existing sublessees on Parcel 21 plus the yacht club and commercial sublessees currently leasing space on Parcel 20; c) construct a 5-story parking structure with 447 parking spaces that includes 94 parking spaces that are being replaced from Parcel OT; d) reconvey the westerly 207 feet of Parcel 21 to the County for use as additional public parking next to Marina Beach; and e) replace the existing 182 slip marina with a new 92-slip marina. A Local Coastal Program ("LCP") Amendment will be required to: 1) transfer the 94 replacement parking spaces from Parcel OT; and b) modify the development permit conditions on Parcel 20 to transfer the yacht club and marine commercial uses to Parcel 21

Lessee has diligently pursued its entitlements but, due to delays beyond its control, was not able to acquire the entitlements for this project prior to the expiration of its existing option. Among the major reasons for the delay have been: a) the complexity of completing a shared Environmental Impact Report (EIR) for two completely different types of developments, commercial complex with docks and a retirement facility, in two different locations; and b) an unsuccessful appeal to your Board challenging the certification of the EIR and approval of the project by the Regional Planning Commission.

On April 26, 2011, your Board certified the EIR and stated its intent to approve the project subject to the submission of findings and conditions for the final approval of the entitlements at a future Board meeting. In addition, Lessee had anticipated that the Coastal Commission would consider the LCP Amendment and Master Waterside Coastal Development Permit, at the June 2011 Coastal Commission meeting but the hearing on those matters was postponed.

The original Option to Amend Lease Agreement between County and Lessee expired on July 15, 2009. In consideration for the County's approving the Renewal of Option to Amend Lease Agreement ("Renewal Of Option") to extend the option period for up to 66 months, Lessee has agreed to pay County a total amount not to exceed \$100,000, payable as follows: (1) \$20,000 upon signing of the Renewal of Option, which provides for an initial extension up to the time at which Lessee receives final approval of its entitlements but in no event later than March 31, 2014; (2) \$30,000 for an additional twenty four-month extension; (3) \$20,000 for an additional six-month extension; and (4) \$30,000 for a second additional six-month period.

Our economic consultant has reviewed the consideration being paid for the extension of the date by which the Option must be exercised and has found that the County is receiving fair value for the amount of time that it is granting to extend the date to implement the transaction as previously negotiated.

Implementation of Strategic Plan Goals

The County Strategic Plan directs that we maximize the effectiveness of the County's processes, structure, and operations to support timely delivery of customer-oriented and efficient public services. The recommended action will allow the Lessee to continue its effort towards the proactive redevelopment of the parcel, which will help the County achieve fiscal sustainability (Strategic Plan Goal No. 1, Strategy No.1).

FISCAL IMPACT/FINANCING

Operating Budget Impact

Upon your Board's approval and the Mayor's execution of the Renewal of Option, the Department of Beaches and Harbors' operating budget will receive a \$20,000 payment. The \$20,000 initial payment was not included in the 2011-2012 Final Adopted Budget; therefore, it will be accounted for as over-realized revenue. If additional extension payments are anticipated, they will be budgeted as one-time revenue.

Costs of consultants and primary County staff involved in the negotiation and development of the options, this renewal and extension, and Amended and Restated Lease are being reimbursed by the Lessee.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Without exercise of the Option, the term of the lease for Parcel 21, which commenced September 1, 1966, will expire August 31, 2026.

Concurrent with the exercise of the Parcel 21 Option, an option as to Parcel OT must also be exercised by Lessee's affiliate, both of which may be exercised only after the entitlements for each project are received. The Lessee has made application to the Department of Regional Planning for its discretionary land use entitlements under the applicable standards of the Marina del Rey LCP, to relocate 94 public parking spaces from Parcel OT to Parcel 21 and to modify the development permit conditions to transfer the yacht club and marine commercial uses from Parcel 20 to Parcel 21. Approval of the extension of the Option is without prejudice to the County's full exercise of its regulatory authority in the consideration of the land use entitlements required for the possible exercise of the Option.

Amendment and extension of the existing lease are authorized by Government Code Sections 25907 and 25536. The extended lease term is in conformance with the maximum 99-year period authorized by California law.

At its meeting of September 14, 2011, the Small Craft Harbor Commission considered the recommendation to approve the Renewal of Lease Option Agreement for Parcel 21 in the form attached, and voted to recommend the project.

County Counsel has approved the Renewal of Option as to form.

ENVIRONMENTAL DOCUMENTATION

On April 26, 2011 your Board considered and certified the Final Environmental Impact Report relating to the proposed lease extension, new lease, and development on Parcels 21 and OT and adopted the related Environmental Findings of Fact and Statement of Overriding Considerations, and the Mitigation Monitoring Programs for these projects.

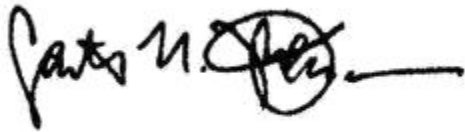
IMPACT ON CURRENT SERVICES (OR PROJECTS)

There is no impact on other current services or projects.

CONCLUSION

Authorize the Executive Officer/Clerk of the Board to send one copy of this Board Letter, as approved, and two copies the executed Renewal of Option to Amend Lease Agreement to the Department of Beaches and Harbors.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Santos H. Kreimann", followed by a horizontal line.

SANTOS H. KREIMANN
Director

SK:GJ:dlg

Enclosures

c: Chief Executive Officer
Executive Officer, Board of Supervisors
County Counsel

**RENEWAL OF OPTION TO AMEND LEASE AGREEMENT
(Parcel 21)**

THIS RENEWAL OF OPTION TO AMEND LEASE AGREEMENT ("**Renewal Agreement**") is made as of October 4, 2011 (the "**Effective Renewal Date**"), between COUNTY OF LOS ANGELES ("**County**"), and HOLIDAY-PANAY WAY MARINA, L.P., a California limited partnership ("**Lessee**").

RECITALS

A. County and Lessee, or its predecessors-in-interest, entered into Lease No. 11210 dated September 27, 1966, as amended (the "**Existing Lease**"), pursuant to which Lessee currently leases from County certain real property in the Marina del Rey Small Craft Harbor commonly known as Parcel No. 21, as more particularly described in the Existing Lease (the "**Existing Premises**").

B. County and Lessee entered into that certain Option to Amend Lease Agreement dated as of July 15, 2008 (the "**Option Agreement**"), whereby County granted Lessee an option (referenced in the Option Agreement as the "**Option**") to amend and restate the Existing Lease in its entirety upon the terms and conditions more specifically set forth in the Option Agreement, including, without limitation, (i) an extension of the term of the Existing Lease through August 31, 2065, (ii) the expansion of the Existing Premises to incorporate certain additional adjacent water area described in the Option Agreement, and (iii) the redevelopment of the Premises in accordance with the terms and provisions of the Option Agreement.

C. In accordance with the terms and provisions of Section 2 of the Option Agreement, the Outside Expiration Date for the exercise by Lessee of the Option was July 15, 2009.

D. Lessee did not receive the Entitlements nor satisfy other conditions to the exercise of the Option set forth in Section 3 of the Option Agreement by July 15, 2009.

E. County and Lessee desire to renew the Option by providing for the extension of the Outside Expiration Date for the exercise by Lessee of the Option, and to make certain other modifications to the Option Agreement, all in accordance with the terms and provisions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Lessee and County hereby agree as follows:

1. **Capitalized Terms.** All capitalized terms used in this Renewal Agreement but not otherwise defined herein shall have the same meanings given such terms in the Option Agreement.

2. Renewal of Option. The Option set forth in the Option Agreement is hereby renewed on the same terms and conditions as set forth in the Option Agreement, which is incorporated into this Renewal Agreement as though fully set forth herein, except that the terms and provisions of the Option Agreement as incorporated herein are modified in accordance with the remaining terms and provisions of this Renewal Agreement. County and Lessee hereby acknowledge and agree that the Option remains in full force and effect and that the Option has been reinstated by this Renewal Agreement retroactive to prior to the expiration of the Option Term that was in effect prior to this Renewal Agreement.

3. Extension of Outside Expiration Date. Section 2 of the Option Agreement is hereby amended in its entirety to read in full as follows:

“2. Option Term. The term of the Option (the “**Option Term**”) shall commence on the date of this Agreement and expire on that date (the “**Option Expiration Date**”) which is the earlier of (i) forty-five (45) days following the later of the Entitlement Receipt Date under this Agreement and the “Entitlement Receipt Date” under the Parcel 147 Option Agreement, as defined in Section 4.4(b) of this Agreement (the “**Parcel 147 Entitlement Receipt Date**”), or (ii) the Outside Expiration Date.

For purposes hereof, the “**Entitlement Receipt Date**” shall mean the first date upon which (a) Lessee has received all discretionary planning and zoning land use entitlements, permits and other approvals required to be obtained from governmental authorities (including the County and the California Coastal Commission) for the construction of the Redevelopment Work (as defined below), including, without limitation, for the development on and relocation to the Premises of the Replacement Parcel 147 Parking Spaces (as defined in Section 15.20.1 of the Restated Lease) and the development on and relocation to the Premises of the Additional Parcel 20 Parking Spaces (as defined in Section 15.20.1 of the Restated Lease), and has satisfied all conditions to the issuance of a building permit for the Redevelopment Work other than the payment of any applicable building permit fee (all of the matters described in this clause (a) are collectively referred to as the “**Entitlements**”), (b) any appeal period to contest the issuance of the Entitlements has lapsed, and (c) there is no proceeding or litigation pending to appeal the issuance of the Entitlements, or to enjoin or restrain the performance of the Redevelopment Work (not including any proceeding or litigation brought by or on behalf of any partner, shareholder or member of, or any other person or entity affiliated with, or otherwise directly or indirectly having an ownership interest in, Lessee or the Parcel 147 Lessee (a “**Lessee Affiliate**”)), or if such a proceeding or litigation is pending, then the date such proceeding or litigation has been dismissed or a decision or judgment

rendered thereon, which decision or judgment is not subject to further appeal.

For purposes of this Agreement, the **"Redevelopment Work"** shall mean the demolition of the existing Improvements (as defined in the Restated Lease) currently located on the Premises and the construction of new Improvements in accordance with the Redevelopment Plan attached to the Restated Lease as Exhibit B, including without limitation: (i) a new commercial building containing not less than 29,000 square feet of rentable area of space to be initially allocated approximately as follows: 5,000 rentable square feet of yacht club space, 10,000 rentable square feet of health club space, 2,916 rentable square feet of retail space and 11,432 rentable square feet of marine commercial office space; (ii) an attached parking structure with 447 parking spaces or such other number of parking spaces as required under Section 15.20 of the Restated Lease (the **"Parking Structure"**); (iii) complete replacement of the existing 182 boat slips and related Improvements with approximately 92 new boat slips (with an average slip length of approximately 36.4 lineal feet) and related Improvements (the **"Anchorage Replacement Work"**), provided that County shall have the right to approve Lessee's proposed configuration and specifications for such slips; and (iv) the Promenade Work described in Section 15.19 of the Restated Lease.

The **"Outside Expiration Date"** shall initially be March 31, 2012; provided, however, that if the Entitlement Receipt Date and the Parcel 147 Entitlement Receipt Date have not occurred as of March 31, 2012, then as long as Lessee and the Parcel 147 Lessee have proceeded and continue to use diligent efforts to cause the Entitlement Receipt Date and the Parcel 147 Entitlement Receipt Date to occur as soon as possible, and are not, and continue to not be, in Default of this Option Agreement, the Existing Lease or the Parcel 147 Option Agreement, the Outside Expiration Date shall be automatically extended until the earlier of (I) forty-five (45) days following the later of the Entitlement Receipt Date or the Parcel 147 Entitlement Receipt Date, (II) the date of the denial by the applicable governmental authority of any of the required Entitlements under this Agreement and the required "Entitlements" under the Parcel 147 Option Agreement, without further right of appeal, or (III) March 31, 2014. Notwithstanding the foregoing, at any time that Lessee or the Parcel 147 Lessee fails to continue to use diligent efforts to cause the Entitlement Receipt Date and the Parcel 147 Entitlement Receipt Date to occur as soon as possible, and such failure is not cured within ten (10) days after written notice from County, or at any time that Lessee or the Parcel 147 Lessee is in Default under this Option Agreement, the Existing Lease or the Parcel 147 Option Agreement, County shall have the right to terminate this Option Agreement upon written notice to Lessee.

Lessee shall have the right to extend the Option Expiration Date set forth in the immediately preceding paragraph for up to the following three additional periods upon delivery by Lessee to County, not later than one (1) month prior to the Option Expiration Date that is then in effect prior to such extension, of both written notice by Lessee to County of such extension and the payment by Lessee to County of the applicable **"Additional Option Extension Fee"** set forth below for such extension:

- (a) twenty-four (24) months upon payment of an Additional Option Extension Fee of Thirty Thousand Dollars (\$30,000);
- (b) six (6) months upon payment of an Additional Option Extension Fee of Twenty Thousand Dollars (\$20,000); and
- (c) six (6) months upon payment of an Additional Option Extension Fee of Thirty Thousand Dollars (\$30,000).

Notwithstanding the foregoing, Lessee shall have no right to extend the Option Expiration Date pursuant to this paragraph at any time during which Lessee is in Default under this Option Agreement or the Existing Lease or the Parcel 147 Lessee is in Default under the Parcel 147 Option Agreement. Time is of the essence with respect to the exercise by Lessee of any right to extend the Option Expiration Date pursuant to this paragraph.

For purposes of this Option Agreement, (A) Lessee shall be in **"Default"** under this Option Agreement if Lessee is in material breach of any term or provision of this Option Agreement and Lessee fails to cure such breach (x) within ten (10) days after written notice from County in the case of a monetary breach, or (y) within thirty (30) days after written notice from County in the case of a non-monetary breach, provided that if the nature of the non-monetary breach is that it cannot reasonably be cured within a thirty (30) day period, then Lessee shall not be in Default as long as Lessee commences the cure of such breach within thirty (30) days after written notice from County and diligently and continuously prosecutes the cure of such breach to completion as soon as possible thereafter; and (B) Lessee shall be in **"Default"** under the Existing Lease if Lessee is in material breach or default of any term or provision of the Existing Lease and Lessee fails to cure such breach or default following written notice from County and the expiration of the applicable cure period set forth in the Existing Lease. For purposes of this Option Agreement, the Parcel 147 Lessee shall be in **"Default"** under the Parcel 147 Option Agreement based upon the meaning of **"Default"** set forth in Section 2 of the Parcel 147 Option Agreement, as amended."

4. Option Extension Fee and Additional Option Extension Fees. Concurrently herewith, Lessee has paid to County the sum of Twenty Thousand Dollars (\$20,000) (the “**Option Extension Fee**”) in consideration for County’s execution and delivery of this Renewal Agreement and County’s renewal of the Option and extension of the Outside Expiration Date to the date set forth in the fourth paragraph of Section 2 of the Option Agreement (as amended above). The Option Extension Fee and any Additional Option Extension Fees paid by Lessee pursuant to Section 2 of the Option Agreement (as amended above) shall be non-refundable, and are in addition to the Option Fee paid by Lessee to County pursuant to Section 1 of the Option Agreement. The Option Extension Fee and any Additional Option Extension Fees shall not be applicable against the Option Fee.
5. Definition of Director. For purposes of this Renewal Agreement and the Option Agreement, “**Director**” means the Director of the Department of Beaches and Harbors of the County.
6. County Costs. Regardless of whether Lessee exercises the Option, Lessee shall promptly reimburse County for the Actual Costs (as defined in the Restated Lease) incurred by County in connection with the review, negotiation, preparation and documentation of this Renewal Agreement and the matters addressed herein.
7. Entire Agreement. This Renewal Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all previous negotiations, communications or understandings between the parties, whether oral or written, with respect to the subject matter set forth herein.
8. No Other Modifications. County and Lessee acknowledge and agree that the Option Agreement is in full force and effect, unmodified except as set forth in this Renewal Agreement.
9. Counterparts. This Renewal Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall collectively constitute one fully-executed document.
10. Existing Encumbrances. Lessee represents and warrants that there are no deeds of trust, mortgages or other security interests that encumber Lessee’s interest in the Existing Lease or the Existing Premises except as disclosed in the Lender’s Consent attached hereto, and that except for partnership consents that have been obtained by Lessee, no consent is required from any other person or entity as a condition to the effectiveness of this Agreement against Lessee and its interest in the Existing Lease and Existing Premises. The renewal of the Option Agreement and the extension of the Option Term set forth herein are contingent upon (a) the accuracy of the foregoing representation and warranty, and (b) the execution and delivery of such Lender Consent concurrent with the execution and delivery of this Renewal Agreement by Lessee and County.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, County and Lessee have entered into this Renewal Agreement as of the date first set forth above.

COUNTY OF LOS ANGELES

By:

Mike Antonovich
Mayor, County of Los Angeles

HOLIDAY-PANAY WAY MARINA, L.P.,
a California limited partnership

By: GKB Development Co., LLC, a
California limited liability company,
its General Partner

By: Alta Group GP, LLC, a
California limited liability
company, a Manager

By:

Jona Goldrich, Manager



SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By:

Lachelle Amitherman
Deputy

ATTEST:

SACHI A. HAMAI,
Executive Officer of the Board of Supervisors

By:

Lachelle Amitherman
Deputy

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

27

OCT 4 2011

APPROVED AS TO FORM:

ANDREA SHERIDAN ORDIN,
County Counsel

By:

[Signature]
Deputy

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By:

[Signature]

LENDER CONSENT

The undersigned represents that it is the current beneficiary under that certain Deed of Trust With Assignment of Rents dated September 30, 1999, originally granted to Holiday Marinas, Inc., and recorded in the Official Records of Los Angeles County, California on October 1, 1999 as Instrument No. 99-187427 (the "Deed of Trust"), as assigned to the undersigned by Assignment of Deed of Trust dated January 31, 2001 and recorded in the Official Records of Los Angeles County, California as Instrument No. 01-0199678. As such current beneficiary the undersigned hereby consents to the foregoing Renewal of Option to Amend Lease Agreement and agrees that the Deed of Trust is subject and subordinate to such Renewal of Option to Amend Lease Agreement.

OVERLAND FINANCIAL COMPANY,
LLC, a California limited liability company

By: _____


Jona Goldrich, President